IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

LA.App..No. 553 of 2004(C)

LAR.369/2001 of ADDL.SUB COURT, THALASSERY
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APPELLANT: 1ST CLAIMANT:

VENGILATTU RADHA, AGED ABOUT 63 YEARS,
D/O. LATE RAMUNNY, ARAKKAL VEEDU, P.O. MELUR,
THALASSERY.

BY ADV. SRI.V.RAJAGOPAL

RESPONDENT: 2ND CLAIMANT:

STATE OF KERALA,
REPRSENTED BY DISTRICT COLLECTOR, KANNUR.

BY GOVERNMENT PLEADER

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 04/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

LAA 553 OF 2004

I.A.538/2005

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DISMISSED

4.10.2007 KURIAN JOSEPH, JUDGE

HARUN-UL-RASHID, JUDGE

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No.553 of 2004-C

Dated: October 4, 2007

JUDGMENT

Harun-Ul-Rashid, J.

This appeal by the 1st claimant is directed against the judgment and decree dated 23.9.2003 in LAR No.369/2001 on the file of the Addl. Sub Court, Thalassery. An extent of 0.2023 hectares of land was acquired for Dharmadam Tourism Project. The Land Acquisition Officer as per award No.3/2001 dated 9.3.2001 fixed Rs.2,08,875/- as compensation. The amount is deposited and the reference is made stating that the claimant did not produce the document of title during the award enquiry. The appellant/claimant produced Exts.A1 to A3 to prove her title. Ext.A1 is the deed in favour of the claimant by which she had obtained possessory right from her assignor. Ext.A2 is the purchase certificate issued on 3.7.2001. The Reference Court took the view that since the acquisition process was over before the issuance of the purchase certificate, the claimant had not obtained title to the property as on the date of acquisition. Therefore, the Reference Court held that the appellant/claimant is not entitled to the entire compensation amount. Accordingly, 1/4th of the amount was ordered to be disbursed to the State and the remaining 3/4th shall be disbursed to the appellant /claimant. This appeal is filed against the direction in the judgment to disburse 1/4th of the amount to the State.

2. The appellant filed a statement before the Reference

Court claiming the entire compensation amount and contended before us that the Reference Court failed to note the application of S.72(c) which gives no option to the cultivating tenant but to accept the assignment and that Ext.A2 certificate should have been acted upon.

3. The property was taken from the absolute physical possession of the appellant only. That the appellant was in possession as a cultivating tenant was not in dispute. Ext.A2 is the purchase certificate issued to her and she is the title holder. It is true that Ext.A2 was issued to the appellant only after the commencement of the land acquisition proceedings. But Ext.A2 should not have been looked upon by the learned Sub Judge as though it is a post-litigation document or a document which is send lis pendens. Ext.A2 purchase certificate is issued by virtue of S.72 of the Kerala Land Reforms Act under which the appellant became entitled to fixity of tenure on the day the Land Reforms Act came into force and Ext.A2 is obviously issued in confirmation of cultivating tenancy rights which the appellant was already having before the commencement of the land acquisition proceedings. The apportionment of 1/4th of the compensation amount to the State is illegal. Even the State has no case that they have filed any claim statement claiming 1/4th of the compensation amount or put forward any claim for apportionment of the compensation amount. In such circumstances we find merit in the appeal.

Accordingly, we allow the appeal, set aside the judgment and

decree under appeal to the extent of awarding 1/4th of the compensation amount to the State. The appellant/claimant is entitled to the full amount of compensation decreed by the court below. The judgment and decree under appeal is thus modified. There will be no order as to costs.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-